



February 21, 2019

NOTICE OF PUBLIC HEARING AND ADOPTION MEETING

The Delta Stewardship Council will hold a Public Hearing and shall consider proposed findings regarding the appeals of the certification of consistency submitted on November 2, 2018, by the

San Joaquin Area Flood Control Agency

for the

**Smith Canal Gate Project
Certification Number C20188**

The Public Hearing will commence on

Thursday, March 21, 2019, 10:00 a.m.

at

University Plaza Waterfront Hotel
Waterfront 1 Room
110 W. Fremont Street
Stockton, California, 95202

The Delta Stewardship Council (Council) will hold a public hearing at the time, date, and location listed above to receive public comments on and consider the adoption of findings regarding the appeal of the Certification of Consistency Number C20188 (Certification) submitted by the San Joaquin Area Flood Control Agency (SJAFCA) for the Smith Canal Gate Project. The proposed findings will be distributed to the Service List and posted to the Council's covered action web page separately prior to the public hearing.¹

BACKGROUND

The Delta Reform Act of 2009 requires that a state or local public agency that proposes to undertake a covered action must, prior to initiating the implementation of that action, submit a written Certification of Consistency with detailed findings as to whether the covered action is consistent with the Delta Plan. (Wat. Code, § 85225.)

The Smith Canal Gate Project is a covered action. SJAFCA submitted the Certification on November 2, 2018.

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

¹ The proposed findings will also be available via the Council's main web page: <http://deltacouncil.ca.gov/>.

The Delta Reform Act allows any person who claims that a covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal of a certification of consistency submitted to the Council. (Wat. Code, § 85225.10, subd. (a); Administrative Procedures § 6).

The Appellant, Atherton Cove Property Owners Association (ACPOA), submitted a timely appeal of the Certification on December 3, 2018.

The Delta Reform Act requires that the Council hold a hearing within 60 days of the effective filing date of the appeals, and that the Council makes its decision on the appeal within 60 days of the hearing. (Wat. Code, § 85225.20.)

The Council held a hearing on January 24, 2019, in Sacramento, California. The Appellant, SJAFCA, and all other interested persons were invited to participate. Upon conclusion of the hearing, the Presiding Officer directed Council staff to prepare proposed findings regarding the appeals based on the record and comments received in the matter.

Council staff have prepared draft findings regarding the appeals of the certification of consistency and will make them available for public review and comment on February 21, 2019.² As discussed in this notice, the Appellant, SJAFCA, and all other interested persons are invited to submit written comments regarding the staff draft findings by **12:00 p.m., Thursday, February 28, 2019**. Council staff will consider written comments prior to issuing proposed findings and an accompanying staff report prior to the March 21, 2019 hearing.

PURPOSE

The purpose of the public hearing will be to receive comment on the proposed findings regarding the appeals.³ Upon conclusion of the public hearing, the Council will deliberate and consider taking action on the proposed findings.

SUBSTANTIAL EVIDENCE SCOPE OF REVIEW

The scope of the Council's review in this matter is limited to whether the Certification was supported by substantial evidence in the record before SJAFCA at the time it submitted the certification. (Wat. Code § 85225.25.)

PROCEDURES

This hearing will be held during a regular meeting of the Council. The Council anticipates taking formal action following the hearing. The hearing will be conducted in accordance with

² The draft findings and an accompanying staff report will also be available via the Council's main web page: <http://deltacouncil.ca.gov/>.

³ A track-changes version of the proposed findings showing the changes made to the February draft will be distributed to the Service List and posted to the Council's web page prior to the public hearing.

Chapter 3 of the Delta Reform Act (Wat. Code, §§ 85225-85225.30) and the Council's [Administrative Procedures Governing Appeal](#)⁴ (Administrative Procedures). There will be no sworn testimony or cross-examination, but the Council and its staff may ask clarifying questions. Council Vice-Chair Fiorini will serve as the Presiding Officer.

PARTICIPATION

The Appellant, SJAFCA, or any other person may provide oral comments at the hearing. **The Council requests that comments focus on the proposed findings.**

The Council encourages all parties and interested persons to submit any other materials to be presented at the hearing, including additional evidence, presentation slides, and other visual displays, to the Council no later than **12:00 p.m., Monday, March 18, 2019**. Please submit any presentation materials to: smithcanalcert@deltacouncil.ca.gov, and copy all parties on the Service List. Please include "Smith Canal C20188" in the subject line of any email. If electronic submittal is not possible, you may mail or deliver your submittals to the following address: Clerk to the Council, ATTN: Smith Canal C20188, Delta Stewardship Council, 980 9th Street, 15th Floor, Sacramento, California, 95814.

If you intend to use PowerPoint or other electronic slides during your presentation, and you have not emailed them to the Council address above by **12:00 p.m., Monday, March 18, 2019**, you should arrive early (recommended time 45 minutes) to the hearing with your presentation on a USB flash drive for the Council Clerk. To help you have an orderly presentation, the Council Clerk requests that the titles of the submitted electronic presentations indicate the party name (e.g., SJAFCA, Appellant, other).

If electronic submittal is not possible, you may mail your submittals to the following address:

Clerk to the Council
ATTN: Smith Canal C20188
Delta Stewardship Council
980 9th Street, 15th Floor
Sacramento, California, 95814

If you wish to submit written comments to be considered during the hearing, they must be received by the Council no later than **5:00 p.m., Friday, March 15, 2019**. Because the Council is required by the Delta Reform Act to take action no later than 60 days following the hearing on the appeals, the Council anticipates taking action after the conclusion of the hearing, and therefore will not be able to consider any written statements or materials submitted after **5:00 p.m., Friday, March 15, 2019**.

Parties listed on the Service List must copy all submittals and written comments to the Service List. Interested persons who are not listed on the Service List may copy submittals to the Service List. All submittals will be posted to the Council's Smith Canal covered action [web page](#).

⁴ <http://deltacouncil.ca.gov/docs/covered-actions-delta-plan/appeals-procedures>

Presentation Order and Time Limits

The order of presentation at the hearing shall be as follows:

1. SJAFCA
2. Appellant
3. All Other Interested Persons (Public Comment)

SJAFCA and the Appellant will each be allowed 20 minutes for oral presentation. All other interested persons will each be allowed 3 minutes for oral presentation. Additional time will be allowed for questions by the Council members or Council staff. The Presiding Officer retains discretion to shorten the time limit for all other interested persons (public comment) prior to the commencement of the public comment period as necessary based on the number of persons appearing to testify during this time period.

If you have questions or need reasonable accommodation due to a disability, please contact the Delta Stewardship Council's Meeting Services office at (916) 445-5511, or TDD (800) 735-2929.

STAFF-PREPARED DRAFT FINDINGS

The Council is making available for public review and comment staff-prepared draft findings. The proposed findings will be distributed to the Service List and posted to the Council's covered action web page.⁵ Parties and all other interested persons are invited to submit written comments. The Council requests that comments focus on the proposed findings.

If you wish to submit written comments, they must be received by the Council no later than **12:00 p.m., Thursday, February 28, 2019**. Please submit any comments to: smithcanalcert@deltacouncil.ca.gov, and copy all parties on the Service List. Please include "Smith Canal C20188" in the subject line of any email.

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⁵ The draft findings will also be available via the Council's main web page: <http://deltacouncil.ca.gov/>.

RECORD

The record of these proceedings, including Council notices, the Service List, submittals from the parties and interested persons, and the record supporting the Certification is available on the Council's Smith Canal covered action [web page](#).⁶

PROHIBITION ON EX PARTE COMMUNICATIONS

The Council's appellate proceedings are subject to the prohibition on ex parte communications. (Gov. Code § 11430.10 et seq; Administrative Procedures §§ 26-28.) Parties and interested persons, including any employees or representatives, may not communicate directly or indirectly with Council members or Council staff regarding any issue in this proceeding, without notice and opportunity for all parties to participate in the communication. (Gov. Code § 11430.10.) The only exceptions to this prohibition are communications required for disposition of an ex parte matter specifically authorized by statute, or communications concerning a matter of procedure or practice that is not in controversy. (Gov. Code § 11430.20.)

For this matter, the Council instituted the ex parte restrictions effective December 3, 2018. Please see the Council's Notice posted on the Council's covered action [web page](#) for more details.

If you have any questions concerning matters of procedure or practice that are not in controversy, please contact Erika Giorgi, Senior Attorney, at (916) 445-5891 or at Erika.Giorgi@deltacouncil.ca.gov. Please do not contact Council members directly.

ELECTRONIC MAILING LIST

All correspondence and information from the Council regarding this matter will be sent via electronic mail to the parties listed in the Service List, and posted to the Council's Smith Canal Gate Project covered action [web page](#). All submittals to the Council may be made to: smithcanalcert@deltacouncil.ca.gov (parties must copy all other parties on the Service List), and please include "Smith Canal C20188" in the subject line.

Interested persons may receive future correspondence from the Council on this matter by subscribing to the Council's electronic mailing list. You may subscribe to the Council's electronic mailing list here: <http://deltacouncil.ca.gov> (scroll to "get updates" and click "subscribe").

If you are unable to receive electronic mail, you must send your request to receive a hard copy of future correspondence via U.S. mail to: Clerk to the Council, Delta Stewardship Council, 980 9th Street (15th Floor), Sacramento, California 95814, and include "Smith Canal C20188" in the subject line. If the current address we have for you does not contain an email address and you have access to email, please send your email address as soon as possible to

⁶ https://coveredactions.deltacouncil.ca.gov/profile_summary.aspx?c=86b4471f-f63c-4cd3-97b0-ebaf91324c49

SmithCanalCert@deltacouncil.ca.gov and please include "Smith Canal C20188" in the subject line.

You should act as soon as possible to ensure you receive all future correspondence.